

CALIFORNIA CODE OF REGULATIONS,

TITLE 10, CHAPTER 5

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¹ These regulations were approved by the Office of Administrative Law and filed with the Secretary of State on May 3, 1994. These regulations will become effective on the thirtieth day after May 3, 1994.

SECTION 2698.40.

AUTHORITY AND PURPOSE.

The purpose of these regulations is to set forth the functions and objectives of insurer, or insurer-based, fraudulent claims investigative units, commonly called "Special Investigative Units" ("SIU" or "SIUs") and the functions and objectives of the Department of Insurance in monitoring the SIUs.

NOTE: Authority : Insurance Code Sections 1875.20, 1875.21, 1875.22 and 1875.23; Government Code section 11342.2; Calfarm Ins. Co. v. Deukmejian (1989) 48 Cal.3d 805, 824, 258 Cal. Rptr. 161, 771 P.2d 1247; Credit Ins. Gen. Agents Assn. v. Payne (1976) 16 Cal.3d 651, 656, 128 Cal. Rptr. 881, 547 P.2d 993; Garris v. Carpenter (1939) 33 Cal. App. 2d 649, 653, 92 P.2d 688.

Reference: Insurance Code Sections 1875.20, 1875.21, 1875.22 and 1875.23.

SECTION 2698.41. DEFINITIONS.

- (a) *"Claims handler" means every employee and agent of an insurer whose principal responsibilities include the investigation, adjustment, settlement and resolution of claims.*
- (b) *"Commissioner" means the Insurance Commissioner of the State of California.*
- (c) *"Department" means the California Department of Insurance.*
- (d) *"Fraud Division" means the California Department of Insurance Fraud Division, formerly, the Bureau of Fraudulent Claims. (The Bureau of Fraudulent Claims was designated the Fraud Division subsequent to the publication of Insurance Code Sections 1875.20 et seq. on October 1, 1992.)*
- (e) *For the purpose of these regulations, "insurer" does not include Home Protection companies pursuant to California Insurance Code Sections ("CIC") 12740 et seq. and does not include reinsurers pursuant to CIC Sections 620 et seq.*
- (f) *For the purpose of these regulations, "red flag" or "red flag event" means facts, circumstances or events which, singly or in combination, support(s) an inference that fraud has been committed with respect to an insurance claim.*
- (g) *"Regulations" means these regulations, California Code of Regulations, Title 10, Chapter 5, Subchapter 9, Article 2.*
- (h) *"Special Investigative Unit" means an insurer's designated employees, a functional group which is established by one or more insurer(s), or a functional group with which an insurer contracts, for the purpose of (1) complying with the Purposes and Objectives as set forth in*

Insurance Code Sections 1871 et seq., and Section 2698.42 herein and (2) performing the Functions and Activities as set forth in Section 2698.43 herein of these Regulations.

NOTE: Authority : Insurance Code Sections, 1875.20, 1875.21, 1875.22 and 1875.23; Deukmejian (1989) 48 Cal.3d. 805, 824, 258 Cal. Rptr. 161, 771 P.2d 1247; Credit Ins. Gen. Agents Assn. v. Payne (1976) 16 Cal.3d 651, 656, 128 Cal. Rptr. 881, 547 P.2d 993; Garriss v. Carpenter (1939) 33 Cal. App. 2d. 649, 653, 92 P.2d 688.

Reference: Insurance Code Sections 1875.20, 1875.21, 1875.22 and 1875.23.

SECTION 2698.42. PURPOSE AND OBJECTIVES OF INSURER SPECIAL INVESTIGATIVE UNIT.

The purpose of a Special Investigative Unit is to assure the effective implementation of Sections 1871 et seq., of the Insurance Code ("the Insurance Frauds Prevention Act" or "FPA"), to detect and investigate, on behalf of the insurer, suspected fraudulent claims by insureds or persons making claims for services or repairs against policies held by insureds and to deter insurance fraud and to thereby reduce insurance costs. The SIU shall organize the elements of the insurer's integrated, corporate anti-fraud strategy. The SIU shall cooperate with the insurer's claims handlers who are trained in fraud detection, as well as the insurer's legal personnel, technical support personnel and database support personnel.

The SIU shall meet the following primary objectives through the use of the expertise of the SIU staff:

(a) the establishment of a systematic and effective method to detect and investigate suspected fraudulent claims and to provide for their appropriate disposition;

(b) to educate and train all claims handlers to identify possible insurance fraud through matching specific claims against patterns and trends indicating possible fraud and against specific "red flags", "red flag events" and other criteria indicating possible fraud;

(c) to facilitate insurer communications with the Fraud Division and insurer reporting of suspected fraudulent claims to local district attorneys. For the purpose of these regulations, such communications between the insurer(s) and the Department shall be subject to the provisions of CIC Sections 1872.5 and 1873.2 and

(d) the SIU shall comply with the provisions of Article 6 of the FPA at the insurer's discretion.

NOTE: Authority : Insurance Code Sections 1875.20, 1875.21, 1875.22 and 1875.23; Calfarm Ins. Co. v. Deukmejian (1989) 48 Cal.3d. 805, 824, 258 Cal. Rptr. 161, 771 P.2d 1247 ; Credit

Ins. Gen. Agents Assn. v. Payne (1976) 16 Cal.3d 651, 656, 128 Cal. Rptr. 881, 547 P.2d 993;
Garris v. Carpenter (1939) 33 Cal. App. 2d. 649, 653, 92 P.2d 688.

Reference: Insurance Code Sections 1875.20, 1875.21, 1875.22 and 1875.23.

SECTION 2698.43. *FUNCTIONS AND ACTIVITIES; ELEMENTS FOR A SYSTEMATIC
ANTI-FRAUD STRATEGY.*

The SIU shall undertake the following functions and activities as elements of the insurer's integrated, corporate anti-fraud strategy:

(a) Education and Training:

(1) The SIU shall provide ongoing fraud education and training to the insurer's personnel who have responsibilities which are integral to the insurer's corporate anti-fraud strategy and such training shall include, but is not limited to, claims handlers.

(2) The SIU shall provide ongoing fraud education and training to the insurer's employees who are the insurer's integral, anti-fraud personnel, which is sufficient to enable such personnel to provide the SIU with appropriate information that is adequate to execute the SIU's anti-fraud functions. Such information shall include, but is not limited to, the identification of patterns and trends indicating possible fraud, in the specific lines of insurance handled by the insurer.

(3) The SIU shall establish written procedures to be followed by the insurer's anti-fraud personnel. Such procedures shall include, but are not limited to, the application of patterns and trends indicating possible fraud, of specific "red flags", "red flag events" and other criteria indicating possible fraud, to specific claims for the purpose of assessing the possibility of fraud and the selection and referral of suspected fraudulent insurance claims files to the SIU.

(4) The SIU shall establish training for SIU employees which will enable the employees to effectively analyze claims information, pursue appropriate investigations, conduct appropriate and effective interviews; use available database resources; provide comprehensive and appropriate support to the insurer's anti-fraud personnel and work cooperatively with law enforcement agencies, including, but not limited to, the Fraud Division. For the purpose of these regulations, the following activities shall be considered part of an appropriate investigation:

(A) a thorough review of the claims file;

(B) the identification of all potential witnesses who may provide relevant information on the truth or falsity of the claim;

(C) *the preservation of relevant documents. For the purpose of these regulations, "relevant" has the same meaning as it is given in CIC Section 1874.1(b);*

(D) *the preparation of a concise summary of the completed investigation, setting forth the investigator's conclusion(s) regarding the suspected fraudulent claim and the basis for said conclusion(s).*

(b) Organization and Staffing:

(1) The SIU shall have adequate staffing, and the staff shall have sufficient expertise to assure the timely investigation and disposition of suspected fraudulent claims which are referred to the SIU.

(2) The SIU shall be sufficiently staffed, according to the volume of possible fraudulent claims in a given geographic area and the total number of policies written in each of class of insurance offered by the insurer, to enable the SIU to meet the objectives set forth in Section 2698.42 herein.

(3) An SIU which is maintained by the insurer shall be comprised of employees who have expertise in general claims practices; knowledge of the analysis of claims for patterns of fraud; knowledge of current trends in fraudulent claims, knowledge of specific "red flags", "red flag events" and other criteria indicating possible fraud and knowledge of effective and appropriate methods of suspected fraudulent claims investigation; as well as knowledge of insurance and other relevant law related to insurance fraud and knowledge of the use of available database resources containing information to support the SIU's investigative activities.

(4) The SIU shall be capable of conducting in-service training in fraud detection for the insurer's anti-fraud personnel as set forth in Section 2698.43(a), including, but not limited to, claims handlers.

(c) The SIU shall cooperate with the Fraud Division and other relevant law enforcement agencies and authorized governmental agencies to:

(1) Assure compliance with Sections 1872.4 and 1877.3 of the Insurance Code;

(2) Provide a prompt response to requests made in the course of any criminal or civil investigation undertaken by authorized governmental agencies or law enforcement pursuant to Chapter 12 of the FPA and

(3) Coordinate and participate in anti-fraud training.

NOTE: Authority : Insurance Code Sections 1872, 1875.20, 1875.21, 1875.22 and 1875.23; Calfarm Ins. Co. v. Deukmejian (1989) 48 Cal.3d. 805, 824, 258 Cal. Rptr. 161, 771 P.2d 1247; Credit Ins. Gen. Agents Assn. v. Payne (1976) 16 Cal.3d 651, 656, 128 Cal. Rptr. 881, 547 P.2d 993; Garris v. Carpenter (1939) 33 Cal. App. 2d. 649, 653, 92 P.2d 688.

Reference: Insurance Code Sections 1875.20, 1875.21, 1875.22 and 1875.23.

SECTION 2698.44.

OVERSIGHT OF SPECIAL INVESTIGATIVE UNIT MAINTENANCE
AND OPERATIONS.

(a) Every insurer shall notify the Fraud Division in writing of the name(s) of the insurer's personnel, or the name of the organization with which the insurer has contracted for the maintenance of the SIU, who will communicate with the Fraud Division on matters related to the reporting, investigation and prosecution of suspected fraudulent claims. For the purpose of these regulations, the name(s) of the insurer's personnel who will communicate with the Fraud Division shall not be made part of the public record, and shall be released only pursuant to the provisions of CIC Section 1873.1 applicable to information acquired pursuant to Article 3 of the FPA.

(b) Within ninety days of the effective date of these regulations, every insurer shall submit to the Fraud Division a written report setting forth the manner in which the insurer is complying with Insurance Code Sections 1875.20, 1875.21, 1875.22 and 1875.23 and setting forth how the insurer is meeting the objectives specified in Section 2698.42 of these Regulations.

(c) Annually thereafter, every insurer, with the exception of title insurers and insurance companies writing less than \$500,000.00 in California premium, shall submit a written update report to the Fraud Division specifying any significant changes in the manner in which the insurer is complying with these Regulations. Title insurers and those writing less than \$500,000.00 in California premium shall report biennially. These reports shall include, but shall not be limited to:

(1) a description of the insurer's procedures for detecting, investigating and reporting potentially fraudulent claims;

(2) a description of the insurer's plan for training anti-fraud personnel pursuant to Section 2698.43 of these Regulations and

(3) a written description or chart outlining the organizational arrangement of the insurer's anti-fraud personnel who are responsible for the investigation and reporting of suspected fraudulent claims.

(d) Insurers who enter into contracts for the purpose of compliance with Sections 1875.20, 1875.21, 1875.22 and 1875.23 and these Regulations shall provide a copy of the contract to the Department and shall specify the manner in which the contract is monitored.

NOTE: Authority : Insurance Code Sections 1872, 1875.20, 1875.21, 1875.22 and 1875.23; Calfarm Ins. Co. v. Deukmejian (1989) 48 Cal.3d. 805, 824, 258 Cal. Rptr. 161, 771 P.2d 1247 ; Credit Ins. Gen. Agents Assn. v. Payne (1976) 16 Cal.3d 651, 656, 128 Cal. Rptr. 881, 547 P.2d 993; Garriss v. Carpenter (1939) 33 Cal. App. 2d. 649, 653, 92 P.2d 688.

Reference: Insurance Code Sections 1875.20, 1875.21, 1875.22 and 1875.23.

SECTION 2698.45. PENALTIES.

(a) At the time a new or renewal Certificate of Authority is sought by the insurer, pursuant to Insurance Code Section 700, every insurer shall file a written statement, which is to be signed by an officer of the holder or applicant of the Certificate of Authority, under penalty of perjury under the laws of the State of California, attesting to his or her personal knowledge of the existence and proper maintenance of an SIU within the organization for the purposes, objectives, functions, and activities which are set forth in Sections 2698.42 and 2698.43 herein.

(b) The failure to provide the statement as set forth in Section 2698.45(a) will be grounds for non-renewal or denial of a Certificate of Authority.

(c) After proper noticed hearing conducted in accordance with Government Code Sections 11550 et seq., with the Commissioner having all powers granted therein, any insurer failing to comply with the provisions of Sections 2698.42, 2698.43 and 2698.44 will be subject to a maximum fine of fifty-five thousand dollars (\$55,000.00) and/or the suspension of the insurer's Certificate of Authority for not more than one year.

NOTE: Authority : Insurance Code Sections 700, 704, 704.7, 1872, 1875.20, 1875.21, 1875.22; Calfarm Ins. Co. v. Deukmejian (1989) 48 Cal.3d. 805, 824, 258 Cal. Rptr. 161, 771 P.2d 1247 ; Credit Ins. Gen. Agents Assn. v. Payne (1976) 16 Cal.3d 651, 656, 128 Cal. Rptr. 881, 547 P.2d 993; Garriss v. Carpenter (1939) 33 Cal. App. 2d. 649, 653, 92 P.2d 688.

Reference: Insurance Code Sections 1875.20, 1875.21, 1875.22 and 1875.23.